

## **SITE DEVELOPMENT PERMIT**

<b>FILE NO.</b>	<b>H12-016</b>
<b>LOCATION OF PROPERTY</b>	<b>South side of Moorpark Avenue, approximately 1,150 feet easterly of Saratoga Avenue (3900 Moorpark Avenue)</b>
<b>ZONING DISTRICT</b>	<b>R-M – Multiple Residence Zoning District</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Mixed Use Neighborhood</b>
<b>PROPOSED USE</b>	<b>Site Development Permit to demolish an existing approximately 2,600 square foot clubhouse and office building and replace in the same general location with a new approximately 2,640 square foot clubhouse and office building including the removal of 4 ordinance size Melaleuca trees, at a 174-unit apartment complex on a 5.9 gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>OWNER/ADDRESS</b>	<b>Hudson Portofino LLC 483 Horning Street San José, CA 95112-2911</b>

### **FACTS**

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. This subject site has a designation of Mixed Use Neighborhood on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The subject site is located in the R-M – Multiple Residence Zoning District.
3. The subject 5.9 acre site is developed with a 174 unit apartment complex including a central clubhouse building built in the late 1960s.
4. The site is adjacent to an existing commercial office complex to the west, apartments and townhouses to the east, Moorpark Avenue to the north, and Blackford Avenue to the south.
5. This is a Site Development Permit to allow demolition of the existing approximately 2,600 square foot 2-story clubhouse building and construction in the same general location of an approximately 2,640 square foot 1-story clubhouse building.
6. Under the provisions of Section 20.100.610A.1 of the City of San José Municipal Code a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure on any site.

7. Under the provisions of Part 5 of Chapter 20.80 of the San José Municipal Code, except as specifically exempted by Section 20.80.450, no demolition permit or removal permit shall be issued unless and until a Development Permit which specifically approves such demolition or removal has been issued and has become effective pursuant to the provisions of Chapter 20.100.
8. The project includes removal of 4 Ordinance size Melaleuca trees within the proposed area of work.
9. Section 13.32.070 of the San José Municipal Code requires the issuance of a Tree Removal Permit for the removal of any Ordinance size tree (measuring 56 inches or more in circumference at a height of twenty-four inches above natural grade). Section 13.32.080 allows a Tree Removal Permit request to be included as part of an application for a development permit under the provisions of Title 20.
10. Under the provisions of Section 15302 of CEQA this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have significant adverse effect on the environment.

## **FINDINGS**

After investigation and hearing held pursuant to Chapter 13.32 of the San José Municipal Code, the Director of Planning finds:

1. That the trees affected are of a size, type and condition, and are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; and
3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health requires its removal.

The Director of Planning has considered the following in evaluating the proposed demolition:

1. The approval of the demolition of the building should facilitate a project that is compatible with the surrounding neighborhood.
2. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
3. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted.
4. Rehabilitation or reuse of the existing building would not be feasible.

Finally, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Site Development Permit findings (Section 20.100.630), that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses onsite are mutually compatible and aesthetically harmonious in that:
  - a. The proposed replacement clubhouse is centrally located on the site between 13 existing 2-story apartment buildings. The proposed low pitch of the clubhouse roof and the proposed palette of exterior materials is consistent with the design and materials of the existing surrounding apartment buildings.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
  - a. The proposed 1-story replacement clubhouse building is centrally located on the site and is screened from the public streets and adjacent properties by the existing 2-story apartment buildings that surround the clubhouse on all sides.
  - b. The project conforms to the Residential Design Guidelines
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that:
  - a. Under the provisions of Section 15302 (replacement or reconstruction of existing structures) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
5. Traffic access, pedestrian access and parking are adequate.
  - a. The proposed project replaces an existing clubhouse with a new clubhouse in generally the same location that does not impact the vehicular or overall pedestrian circulation/access around the site.
  - b. The project does not change the existing parking provided for the apartment complex.
6. The application is consistent with the site's General Plan designation of Mixed Use Neighborhood, which supports residential uses.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Permit Expiration.** This Site Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four-year period, the proposed construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Conformance to Plans.** Development of the site shall conform to approved Site Development plans entitled “Portofino Apartments – Clubhouse -, Design Submittal – July 11, 2012, San José, California” dated July 11, 2012 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
5. **Building Permit.** Procurement of a Building Permit from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the “Building Code” shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
6. **Revocation.** This Site Development Permit is subject to revocation for violation of any of its provisions or conditions.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Site Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San José Municipal Code.

9. **Public Works Department Clearance.** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.
  - a. *Stormwater Runoff Pollution Control Measures:* This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs).
  - b. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
  - c. *Street Improvements:*
    - i. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, H12-016, shall be printed on all plans submitted to the Building Division.
  - b. *Permit Adjustment.* A Permit Adjustment is required to address the tree replacement requirements described in Condition No. 16 below. If the entire tree replacement requirement is satisfied by a donation to Our City Forest a Permit Adjustment is not required.
  - c. *Street Number Visibility.* Street numbers of the buildings shall be easily visible at all times, day and night.
  - d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
11. **Green Building.** The project shall comply with the provisions of Ordinance No. 28622 in the San Jose Municipal Code or subsequent ordinance for private-sector green building that is in effect at the time that a building permit application is submitted to the Department of Planning, Building and Code Enforcement Building Division.
12. **Building and Property Maintenance.** The developer shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
13. **Landscaping.** Planting and irrigation are to be provided as indicated on the approved plans. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced. Permanent irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.

14. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines.
15. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
16. **Tree Removals.**

Tree Replacement Requirements			
Diameter of tree to be Removed	Native	Non-Native	Minimum Size of Each Replacement Tree
17.8 inches or greater (56.0 Inches Circumference)	5:1	4:1	24-inch box
12 – 17.8 inches (37.7 – 56.0 Inches Circumference)	3:1	2:1	24-inch box
Less than 12 inches (Less than 37.7 Inches Circumference)	1:1	1:1	15-gallon container

Prior to issuance of Building Permits the applicant shall submit a Permit Adjustment addressing the required replacement of trees at the above stated ratios. Replacement trees may be planted in the public right-of-way along the project frontage, if street trees do not currently exist or if there are gaps in street tree coverage. Contact the City Arborist at 408-794-1901 or [arborist@sanjoseca.gov](mailto:arborist@sanjoseca.gov) for the designated street tree(s). The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the replacement requirements. Such evidence shall be labeled H12-016 and sent to the Planning Project Manager within 30 days of the replacement of the subject trees.

In the event that the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented to the satisfaction of the Director of Planning, Building, and Code Enforcement:

- The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) shall be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjoining properties for screening purposes to the satisfaction of the Director of Planning, Building, and Code Enforcement.
- A donation of \$300 per replacement tree to Our City Forest for in-lieu off-site tree planting in the community. These funds shall be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of Building Permits. If the entire tree replacement requirement is satisfied by a donation to Our City Forest a Permit Adjustment is not required.

17. **Storm Water Stenciling.** All drain inlets shall be labeled “No Dumping-Flows to Bay.” Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.
18. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

**APPROVED** and issued on this 30<sup>th</sup> day of November, 2012.

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

Deputy